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INTERNATIONAL BUSINESS

MACHINES CORPORATION

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

RSI CORP., dba RESPONSIVE
SYSTEMS COMPANY, a New Jersey
corporation,

Plaintiff,

vs.

CIVIL NO. CV 08-00066 JMS/BMK

**DEFENDANT IBM'S MOTION TO
TRANSFER VENUE TO THE
NORTHERN DISTRICT OF
CALIFORNIA PURSUANT TO 28
U.S.C. § 1404(A); MEMORANDUM
IN SUPPORT OF DEFENDANT
IBM'S MOTION TO TRANSFER
VENUE TO THE NORTHERN**

INTERNATIONAL BUSINESS
MACHINES CORPORATION; and
DOE DEFENDANTS 1-20,

Defendants.

**DISTRICT OF CALIFORNIA
PURSUANT TO 28 U.S.C. §
1404(A); LOCAL RULE 7.5(e)
CERTIFICATION;
DECLARATION OF MICHAEL J.
HARRIS; DECLARATION OF
VALERIE RODDY; EXHIBITS
“A” AND “B”; CERTIFICATE OF
SERVICE**

Judge: Hon. J. Michael Seabright

**DEFENDANT IBM'S MOTION TO TRANSFER VENUE
TO THE NORTHERN DISTRICT OF CALIFORNIA
PURSUANT TO 28 U.S.C. § 1404(A)**


Come now defendant International Business Machines Corporation ("IBM"), a New York corporation, by and through their attorneys, KAWASHIMA LORUSSO & HARADA LLP and QUINN EMANUEL URQUHART OLIVER & HEDGES, LLP and move this Honorable Court for an order transferring this case to the United States District Court for the Northern District of California.

This action should be transferred for the convenience of the parties and witnesses and in the interests of justice. Defendant IBM is unaware of a single material witness in this action who resides in Hawaii, and this action lacks any contacts with Hawaii aside from the residence of plaintiff's counsel. Plaintiff RSI Corp. and its President are located in New Jersey. The contracts at issue were negotiated, executed and administered from Northern California, and plaintiff's

points of contact at IBM regarding plaintiff's allegations are located in Northern California.

This motion is made pursuant to 28 U.S.C. § 1404(a) and Rule 7 of the Local Rules of Practice for the United States District Court of Hawaii, and is based on this motion, the attached memorandum in support of this motion, the concurrently-filed declarations of Michael J. Harris and Valerie Roddy, the concurrently-filed Request for Judicial Notice and its attached exhibits, all matters of which this Court may take judicial notice, the pleadings and papers on file in this action, and such evidence and arguments as may be presented at or before the hearing on this motion.

DATED: Honolulu, Hawaii, May 27, 2008.



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CORPORATION

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

RSI CORP., dba RESPONSIVE
SYSTEMS COMPANY, a New Jersey
corporation,

Plaintiff,

vs.

INTERNATIONAL BUSINESS
MACHINES CORPORATION; and
DOE DEFENDANTS 1-20,

Defendants.

**CIVIL NO. CV 08-00066
JMS/BMK**

**MEMORANDUM IN SUPPORT
OF DEFENDANT IBM'S
MOTION TO TRANSFER
VENUE TO THE NORTHERN
DISTRICT OF CALIFORNIA
PURSUANT TO 28 U.S.C. §
1404(A)**

**MEMORANDUM IN SUPPORT OF DEFENDANT IBM'S MOTION
TO TRANSFER VENUE TO THE NORTHERN DISTRICT OF
CALIFORNIA PURSUANT TO 28 U.S.C. § 1404(A)**

I. INTRODUCTION

This dispute has no connection to Hawaii. Plaintiff is a New Jersey corporation, and its principal party-affiliated witnesses reside there. IBM is a New York corporation that administers the licensing agreements at issue in this case from San Jose, California. Plaintiff's points of contact with IBM are in IBM's northern California offices, as are the contacts to whom plaintiff complained concerning its underlying allegations. The only apparent connection to Hawaii is that plaintiff's counsel resides there.

Although plaintiff notes that IBM does business in Hawaii (as it does in all 50 states), that fact alone does not justify venue here. The material witnesses of whom IBM is aware reside in California or New Jersey, both a transoceanic flight away from this District. Litigating this dispute in Hawaii would burden witnesses and the Court for the sole reason of the convenience of plaintiff's *counsel*, a factor that courts afford minimal (if any) weight. The added cost and inconvenience of litigating this case in a distant, unrelated forum greatly outweighs any possible reason for this District to retain it. IBM thus requests that the Court transfer this case to the United States District Court for the Northern District of California.

II. RELEVANT FACTUAL BACKGROUND

The Parties. Plaintiff RSI Corp., doing business as "Responsive Systems Company," is incorporated in the State of New Jersey.¹ Its principal business address is in Morganville, New Jersey.² Its president and principal officer and director is Joel Goldstein, a New Jersey resident.³

¹ Business Entity Status Report for RSI Corp., attached as Exhibit A to the Declaration of Valerie Roddy, dated May 25, 2008 ("Roddy Declaration" or "Roddy Decl."); Complaint, filed February 12, 2008 ("Compl."), at ¶ 1.

² Roddy Decl. Ex. A.

³ *Id.*; Compl. ¶ 2; RSI webpages, attached as Exhibit B to the Roddy Declaration.

Defendant IBM is a New York corporation that does business in all 50 states and around the world.⁴ IBM provides computer hardware, software, and a complete range of information technology services.⁵

IBM develops and licenses a database management product called DB2.⁶ RSI developed a product called Buffer Pool Tool, which DB2 licensees can use to manage their IBM DB2 systems.⁷ In 1997, IBM and RSI entered into a series of agreements under which IBM could license the Buffer Pool Tool product to its customers as an optional feature for their DB2 software, and pay RSI royalties on those licenses.⁸ RSI retained the right to market its own RSI-branded Buffer Pool Tool.⁹ Employees in IBM's San Jose, California office have the primary responsibility for acquiring licensing rights to the software products that IBM incorporates into its DB2 system packages and for administering those licensing agreements, including the agreements with RSI.¹⁰

⁴ Declaration of Michael J. Harris, dated May 23, 2008 ("Harris Decl.") ¶ 4.

⁵ *Id.*

⁶ *Id.* ¶ 6.

⁷ *Id.*; Compl. ¶ 5.

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

The 1997 Developer Agreement. In 1997, plaintiff RSI signed an IBM Developer Agreement that consisted of three component documents.¹¹ All three documents were signed by RSI's president, Joel Goldstein, in Morganville, New Jersey, and for IBM by C.F. Semones in San Jose, California.¹² The licensing agreement document designated "contract coordinators" responsible for amendments and non-technical administrative matters and "technical coordinators" responsible for technical matters relating to the contract. Mr. Goldstein of New Jersey was the contract and technical coordinator for RSI, while two IBM employees in San Jose, California were designated as the contract and technical coordinators for IBM.¹³ The Developer Agreement includes a choice of law

¹¹ IBM Developer Agreement, Agreement No. STL97041, dated June 23, 1997, attached as Exhibit A to the Request for Judicial Notice in Support of Defendant IBM's Motion to Dismiss or, in the Alternative, Strike, dated May 27, 2008, filed concurrently herewith ("Request for Judicial Notice" or "RJN"); Description of Licensed Work, Agreement No. STL97041, DLW No.: 001, dated June 23, 1997, attached as Exhibit B to the Request for Judicial Notice; Statement of Work, Agreement No. STL97041, SOW No.: 001, dated June 23, 1997, attached as Exhibit C to the Request for Judicial Notice.

The agreements at issue are submitted as documentary evidence in support of this motion. True and correct copies are attached as Exhibits A-E to the Request for Judicial Notice and authenticated by the Declaration of Michael J. Harris. Harris Decl. ¶¶ 9-13.

¹² RJN Ex. A at 1; RJN Ex. B at 1; RJN Ex. C at 1.

¹³ RJN Ex. B at 5-6.

provision that adopted New York substantive law.¹⁴ There is no reference to Hawaii in any of the three contract documents.¹⁵

The 1998 Developer Agreement. In 1998, the parties signed additional agreements supplementing the original 1997 Developer Agreement.¹⁶ Mr. Goldstein remained the signatory and contract coordinator for RSI.¹⁷ Rich Beckert, in San Jose, California, signed the documents for IBM, and two other San Jose IBM employees were IBM's contract and technical coordinators.¹⁸ These agreements also do not make any reference to Hawaii.¹⁹

The Alleged Breach of Contract. Plaintiff alleges IBM breached the 1997 and 1998 Developer Agreements by failing to pay all royalties due under the agreements and by refusing to provide documents to audit IBM's royalty payments.²⁰ Plaintiff further alleges that, although IBM told RSI it was

¹⁴ RJN Ex. A at 12 at § 13.06 ("The substantive laws of the State of New York applicable to agreements fully executed and performed in New York govern the [IBM Developer Agreement].").

¹⁵ *See generally* RJN Exs. A-C.

¹⁶ Description of Licensed Work, Agreement No. STL97041, DLW No.: 002, dated April 21, 1998, attached as Exhibit D to the Request for Judicial Notice, at 1; Statement of Work, Agreement No. STL97041, SOW No.: 002, dated April 21, 1998, attached as Exhibit E to the Request for Judicial Notice, at 1.

¹⁷ RJN Ex. D at 1, 5-6; RJN Ex. E at 1, 7-8.

¹⁸ RJN Ex. D at 1, 5-6; RJN Ex. E at 1, 7-8.

¹⁹ *See generally* RJN Exs. D & E.

²⁰ Compl. ¶ 9.

discontinuing its remarketing of the Buffer Pool Tool, RSI discovered in 2004 that certain IBM customers were purportedly improperly continuing to use that software.²¹ In its complaint, RSI alleges claims for (1) breach of contract; (2) negligent misrepresentation; (3) intentional misrepresentation; (4) fraud; (5) breach of the covenant of good faith and fair dealing; (6) conversion; (7) unfair competition in violation of 15 U.S.C. § 1125(a); (8) common law unfair competition; (9) restraint of trade; (10) "unclean hands"; and (11) punitive damages.²² Plaintiff includes no allegations purporting to demonstrate why Hawaii is the appropriate forum for this dispute.

III. ARGUMENT

A district court may transfer a civil action "[f]or the convenience of parties and witnesses [and] in the interest of justice . . . to any other district or division where it might have been brought." 28 U.S.C. § 1404(a). Transfer is appropriate "to prevent the waste 'of time, energy and money' and to 'protect litigants, witnesses and the public interest against unnecessary inconvenience and expense.'" *Van Dusen v. Barrack*, 376 U.S. 612, 616 (1964) (quoting *Cont'l Grain Co. v. Barge F.B.L.-585*, 364 U.S. 19, 26-27 (1960)). Accordingly, district courts have

²¹ *Id.* ¶¶ 10-11.

²² *Id.* ¶¶ 14-18, 20-24, 26-30, 32, 35-36, 38-41, 43-46, 48-49, 51-53, 55, 57-58. Defendant IBM challenges the propriety of many of these claims in its concurrently-filed motion to dismiss.

wide discretion to decide transfer motions according to an "individualized, case-by-case consideration of convenience and fairness." *Stewart Org., Inc. v. Ricoh Corp.*, 487 U.S. 22, 29 (1988).

A. This Action Could Have Been Brought in the Northern District of California

A threshold requirement to transfer venue is that the action "might have been brought" in the transferee forum. 28 U.S.C. § 1404(a). To meet this requirement, the transferee court must have (1) subject matter jurisdiction; (2) proper venue; and (3) personal jurisdiction over the defendants. *See, e.g., Shapiro v. Bonanza Hotel Co.*, 185 F.2d 777, 779-80 (9th Cir. 1950).

The Northern District of California has the same bases of jurisdiction as this Court, including diversity jurisdiction, potential federal question jurisdiction on the basis of plaintiff's Lanham Act claim (15 U.S.C. § 1125) and supplemental jurisdiction. *See, e.g.*, 15 U.S.C. § 1121(a); 28 U.S.C. § 1331; 28 U.S.C. § 1332; 28 U.S.C. § 1367(a). IBM maintains offices in and does business in San Jose in the Northern District of California.²³ Venue is thus proper in the Northern District of California, and that court also has personal jurisdiction over IBM. *See, e.g.*, 28 U.S.C. § 1391(b)(1), (c); *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 414-416 (1984) (court may exercise general personal jurisdiction over

²³ Harris Decl. ¶ 5.

resident defendants or where defendant's contacts with forum are substantial or continuous and systematic). Plaintiff could have brought this action in the Northern District of California.

B. The Convenience of the Parties and Witnesses Greatly Outweighs Plaintiff's Original Choice of a Distant, Unrelated Forum

In determining whether to exercise its discretion to transfer a case to a more appropriate venue, the Court may consider factors that include: (1) where the relevant agreements were negotiated and executed; (2) the state most familiar with the governing law; (3) the plaintiff's choice of forum; (4) the parties' contacts with the forum; (5) contacts relating to the plaintiff's cause of action in the chosen forum; (6) the difference in the cost of litigation in the two forums; (7) the availability of compulsory process to compel attendance of unwilling nonparty witnesses; and (8) the ease of access to sources of proof. *Jones v. GNC Franchising, Inc.*, 211 F.3d 495, 498-99 (9th Cir. 2000). These factors amply demonstrate that the Northern District of California is a far more appropriate forum for the parties, the non-party witnesses, and the interests of justice.

1. The Location Where the Relevant Agreements Were Negotiated and Executed

It is undisputed that the contracts at issue were negotiated and executed by RSI in New Jersey and by IBM in San Jose, California. No negotiations were

conducted in or from Hawaii, and no contracts were executed there. This factor weighs heavily in favor of transfer.²⁴

2. **Plaintiff's Choice of Forum and the Parties' Contacts with the Forum**

A plaintiff's choice of forum has little significance where, as here, the plaintiff does not reside there. *See, e.g., Reiffin v. Microsoft Corp.*, 104 F. Supp. 2d 48, 52 (D.D.C. 2000) ("[S]ubstantially less deference is warranted when the forum preferred by the plaintiff is not his home forum."); *Bryant v. ITT Corp.*, 48 F. Supp. 2d 829, 832 (N.D. Ill. 1999) (same).²⁵ That the plaintiff's choice of forum bears little or, as here, no relation to the underlying facts also warrants only minimal consideration of plaintiff's choice. *See, e.g., Lou v. Belzberg*, 834 F.2d 730, 739 (9th Cir. 1987) ("If the operative facts have not occurred within the forum and the forum has no interest in the parties or subject matter, [plaintiff's] choice is

²⁴ The factor of familiarity with New York law, which governs this dispute, is neutral because both districts will apply the law of a different state. Even plaintiff's tort claims did not arise in Hawaii, so this Court has no interest in applying its law to this case. *Cf. Television Events & Mktg., Inc. v. Amcon Distrib.*, 416 F. Supp. 2d 948, 970-71 (D. Haw. 2006) (declining to transfer venue where license agreements with Hawaiian plaintiff included Hawaiian choice of law provision).

²⁵ Many courts have found that plaintiff's *counsel's* residence in the forum is entitled to no weight in the balancing of factors. *See, e.g., In re Horseshoe Entm't*, 337 F.3d 429, 434 (5th Cir. 2003) ("The factor of 'location of counsel' is irrelevant and improper for consideration in determining the question of transfer of venue."); *Solomon v. Cont'l Am. Life Ins. Co.*, 472 F.2d 1043, 1047 (3d Cir. 1973); *Scott v. New York Cent. R. Co.*, 81 F. Supp. 815, 817 (N.D. Ill. 1948).

entitled to only minimal consideration."); *Pac. Car & Foundry Co. v. Pence*, 403 F.2d 949, 954 (9th Cir. 1968) (same).

This dispute is between companies from New Jersey and New York, some 6000 miles from Hawaii. Except for its chosen counsel, plaintiff alleges no contacts with Hawaii. IBM's general business contacts with Hawaii bear no relation to plaintiff's causes of action. The parties' lack of relevant contacts with Hawaii, and plaintiff's non-resident status, negate any weight that would otherwise be afforded to plaintiff's original choice of forum. In fact, despite a court's broad discretion to decide motions to transfer venue, the Ninth Circuit has found it "clearly erroneous" to refuse to transfer venue where "no contacts of any substance with the State of Hawaii existed as to either party." *Pac. Car & Foundry Co.*, 403 F.2d at 951-52, 955. The complete absence of relevant contacts to this District weighs strongly in favor of transfer.

3. The Cost of Litigation and Ease of Access to Sources of Proof

IBM is unaware of a single material witness or relevant document located in Hawaii. IBM primarily administered the contracts at issue in San Jose, California. Although discovery has not commenced, IBM expects testimony from the following witnesses will be material to plaintiff's claims:

Witness	Suspected Location	Predicted Area of Testimony
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Joel Goldstein	Morganville, New Jersey	Mr. Goldstein was the primary negotiator and RSI contact. He was also the primary RSI correspondent regarding requests for audits of royalty payments and complaints relating to plaintiff's allegations. ²⁶
Ivan Gelb	Marlboro, New Jersey	Mr. Gelb was RSI's designated auditor of IBM's royalty payments. ²⁷
Tom Ramey	San Jose, California	Mr. Ramey was Mr. Goldstein's primary contact at IBM when he demanded royalty payment audits and threatened litigation. Mr. Ramey is also very familiar with IBM's investigation into Mr. Goldstein's complaints. ²⁸
Mike Harris	San Jose, California	Mr. Harris is an IBM contract negotiator involved with the procurement of custom software products like RSI's Buffer Pool Tool. Along with Mr. Ramey, Mr. Harris investigated Mr. Goldstein's complaints. ²⁹
Sarah Karger	San Jose, California	Ms. Karger was a Business Executive for DB2 Tools at IBM. Ms. Karger was closely involved in administration of the IBM-RSI relationship and in responding to RSI's audit requests. ³⁰

Not one of these material witnesses lives in Hawaii. At least three reside in Northern California. The other remaining witnesses are in New Jersey, far closer

²⁶ See, e.g., RJN Exs. A-E; Harris Decl. ¶ 8(a).

²⁷ *Id.* ¶ 8(b).

²⁸ *Id.* ¶ 8(c).

²⁹ *Id.* ¶¶ 5, 7.

³⁰ *Id.* ¶ 8(d).

to northern California than Hawaii.³¹ The additional travel time to Hawaii—requiring a transoceanic flight for every potential witness known to IBM—would make trial significantly more expensive and the scheduling of trial witnesses more difficult and disruptive to their personal and business schedules. This fact weighs heavily in favor of transfer. *Pac. Car & Foundry Co.*, 403 F.2d at 953 (that "[m]any witnesses, including several members of petitioner's corporate staff, would have to travel from the mainland to Hawaii in order to give testimony with consequent disruption" of petitioner's business constituted "a strong showing of inconvenience").

This case lacks a single meaningful connection with Hawaii, and the Northern District of California will provide a more convenient and less expensive forum. Transfer is compelled where no reason exists to retain a case and overwhelming reasons warrant transfer.

³¹ Because many material witnesses are party employees, the availability of compulsory process is unlikely to be essential to the resolution of this case. Thus, this factor is neutral here.

IV. CONCLUSION

For the foregoing reasons, IBM respectfully requests that the Court transfer this matter to the United States District Court for the Northern District of California.

DATED: Honolulu, Hawaii, May 27, 2008.

A handwritten signature in black ink, appearing to read 'James Kawashima', is written over a horizontal line.

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INTERNATIONAL BUSINESS MACHINES
CORPORATION

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DOE DEFENDANTS 1-20,

Defendants.

**CIVIL NO. CV 08-00066
JMS/BMK**

**LOCAL RULE 7.5(e)
CERTIFICATION**

LOCAL RULE 7.5(e) CERTIFICATION

According to the word-count function of the undersigned's word processing program (Microsoft Word 2003), the foregoing Memorandum in Support of Defendant IBM's Motion to Transfer Venue To The Northern District Of California Pursuant To 28 U.S.C. § 1404(A) contains a total of 2,686 words, excluding this certification and tables of authorities and contents.

DATED: Honolulu, Hawaii, May 27, 2008.



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INTERNATIONAL BUSINESS

MACHINES CORPORATION

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DOE DEFENDANTS 1-20,
Defendants.**

**CIVIL NO. CV 08-00066
JMS/BMK**

**DECLARATION OF
MICHAEL J. HARRIS**

DECLARATION OF MICHAEL J. HARRIS

I, Michael J. Harris, declare as follows:

1. I am a Contract Administrator and Team Lead, Custom Software Procurement for International Business Machines Corporation ("IBM"), a party in the above-entitled action. I make this declaration of personal, firsthand knowledge, unless otherwise indicated herein, and if called and sworn as a witness, I could and would testify competently thereto.

2. This Declaration is made in lieu of an affidavit pursuant to Local Rule 7.6, Rules of the United States District Court for the District of Hawaii, as amended.

3. I make this Declaration in support of Defendant IBM's Motion to Transfer Venue to the Northern District of California Pursuant to 28 U.S.C. § 1404(a) and in support of the Request for Judicial Notice in Support of (1) Defendant International Business Machines Corporation's Motion to Transfer Venue and (2) Defendant International Business Machines Corporation's Motion to Dismiss or, in the Alternative, Strike ("Request for Judicial Notice"), filed concurrently herewith.

4. IBM is a New York corporation that does business in all 50 states and around the world. IBM manufactures, designs and provides business computer hardware, software, and information technology services.

5. As Contract Administrator and Team Lead, Custom Software Procurement, I work at IBM's Silicon Valley business campus in San Jose, California, from which IBM conducts many business activities, including the administration of the contracts at issue in this case. I have personal knowledge of the negotiation of both contracts at issue in this matter, as well as many of the events at issue in this case.

6. IBM licenses a database management product called DB2. RSI developed a product called Buffer Pool Tool, which DB2 licensees can use to help manage their IBM DB2 systems. In 1997, IBM and RSI entered into a series of agreements under which IBM could license the Buffer Pool Tool product to its customers as an optional feature for their DB2 software, and pay RSI royalties on those licenses. RSI retained the right to market its own RSI-branded Buffer Pool Tool. Employees in IBM's San Jose, California office have the primary responsibility for acquiring licensing rights to the software products that IBM incorporates into its DB2 system packages and for administering those licensing agreements, including the agreements with RSI.

7. I am familiar with the underlying factual dispute between RSI and IBM and was involved in investigating the complaints and audit requests of Joel Goldstein, RSI's president, before RSI filed this lawsuit. I live in the San Jose,

California area. I do not live or maintain a home in Hawaii, nor do I regularly travel there.

8. In addition to myself, I am aware of the following other individuals who are familiar with the underlying facts of this case:

a. Joel Goldstein. Mr. Goldstein was the primary negotiator and RSI contact. He was also the primary RSI correspondent regarding requests for audits of royalty payments and complaints relating to plaintiff's allegations. I am informed and believe that Joel Goldstein resides in or around Morganville, New Jersey.

b. Ivan Gelb. Mr. Gelb was RSI's designated auditor of IBM's royalty payments. I am informed and believe that Mr. Gelb resides in or around Marlboro, New Jersey.

c. Tom Ramey. Mr. Ramey was Mr. Goldstein's primary contact at IBM after 2005 when he demanded royalty payment audits and threatened litigation. Mr. Ramey is also very familiar with IBM's investigation into Mr. Goldstein's complaints. I am informed and believe that Mr. Ramey resides in or around San Jose, California.

d. Sarah Karger. Ms. Karger was a Business Executive for DB2 Tools at IBM. Ms. Karger was closely involved in the administration of the IBM-RSI relationship during 2002-2004 and in responding to plaintiff's audit-related

requests. I am informed and believe that Ms. Karger resides in or around San Jose, California.

9. A true and correct copy of the IBM Developer Agreement, Agreement No. STL97041, dated June 23, 1997 between IBM and Responsive Systems Company is attached as Exhibit A to the concurrently-filed Request for Judicial Notice.

10. A true and correct copy of the Description of Licensed Work, Agreement No. STL97041, DLW No. 001, dated June 23, 1997 between IBM and Responsive Systems Company is attached as Exhibit B to the concurrently-filed Request for Judicial Notice.

11. A true and correct copy of the Statement of Work, Agreement No. STL97041, SOW No. 001, dated June 23, 1997 between IBM and Responsive Systems Company is attached as Exhibit C to the concurrently-filed Request for Judicial Notice.

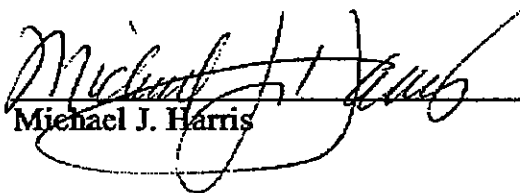
12. A true and correct copy of the Description of Licensed Work, Agreement No. STL97041, DLW No. 002, dated April 21, 1998 between IBM and Responsive Systems Company is attached as Exhibit D to the concurrently-filed Request for Judicial Notice.

13. A true and correct copy of the Statement of Work, Agreement No. STL97041, SOW No. 002, dated April 21, 1998 between IBM and Responsive

Systems Company is attached as Exhibit E to the concurrently-filed Request for Judicial Notice.

I declare under penalty of law that the foregoing is true and correct to the best of my knowledge and belief.

DATED: San Jose, California, 5/23/2008


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Fax No. 213-443-3100

Attorneys for Defendant

INTERNATIONAL BUSINESS

MACHINES CORPORATION

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

**RSI CORP., dba RESPONSIVE
SYSTEMS COMPANY, a New Jersey
corporation,**

Plaintiff,

vs.

**INTERNATIONAL BUSINESS
MACHINES CORPORATION; and
DOE DEFENDANTS 1-20,
Defendants.**

**CIVIL NO. CV 08-00066
JMS/BMK**

**DECLARATION OF
VALERIE RODDY**

DECLARATION OF VALERIE RODDY

I, Valerie Roddy, declare as follows:

1. I am an associate at Quinn Emanuel Urquhart Oliver & Hedges, LLP, attorneys for International Business Machines Corporation ("IBM"), a party in the above-entitled action. I make this declaration of personal, firsthand knowledge, and if called and sworn as a witness, I could and would testify competently thereto.

2. This Declaration is made in lieu of an affidavit pursuant to Local Rule 7.6, Rules of the United States District Court for the District of Hawaii, as amended.

3. I make this Declaration in support of Defendant IBM's Motion to Transfer Venue to the Northern District of California Pursuant to 28 U.S.C. § 1404(a), filed concurrently herewith.

4. Attached as Exhibit A hereto is a true and correct copy of a "Business Entity Status Report" on plaintiff RSI Corp., available from the New Jersey State Business Gateway Service Corporate and Business Information Reporting website at <https://www.accessnet.state.nj.us/gatewaywatchnamesearch.asp>, last accessed May 16, 2008.

5. Attached as Exhibit B hereto is a true and correct copy of "Responsive Systems - The Company," a webpage available at <http://www.responsivesystems.com/company.htm>, last accessed May 16, 2008.

I declare under penalty of law that the foregoing is true and correct to the best of my knowledge and belief.

DATED: Los Angeles, California, May 25, 2008

Valerie Roddy
Valerie Roddy

EXHIBIT A



New Jersey State Business Gateway Service

Corporate and Business Information Reporting

Business Entity Status Report

Printing Instructions: Open your Browser's Page Setup menu and set your page margins to 0.25". Use your Browser's Print option to print the report as seen on screen.

Saving Instructions: Save this file to your hard drive for later viewing by using the Browser's "Save As" function.
All available information is displayed.

Status Report For: RSI CORP.	
Business Name: RSI CORP.	Report Date: 05/16/2008
Business ID Number: 0100141601	Transaction Number: Sequence: 1307674: 1
Business Type: DOMESTIC PROFIT CORPORATION	
Status: ACTIVE	
Filing Date: 06/03/1981	Home Jurisdiction: NJ
Status Change Date:	Stock Amount: 100
DOR Suspension Start Date:	DOR Suspension End Date:
Tax Suspension Start Date:	Tax Suspension End Date:
Annual Report Month: 6	
Last Annual Report Filed: 04/14/2008	
For Last Annual Report Paid Year: 2008	
Incorporator: JOEL S. GOLDSTEIN	
Agent: JOEL GOLSTEIN	
Agent Address: 281 RT 79	
MORGANVILLE, NJ 07751	

file://C:\Documents and Settings\valerieroddy\Desktop\NJ Business Entity Status Reports.htm

5/25/2008

Office Address Status: Deliverable
 Main Business Address: 281 RTE 79
 MORGANVILLE, NJ 07751
 Principal Business Address: 281 HWY 79
 MORGANVILLE, NJ 07751

Associated Names	Type Description:
Name:	

Officers/Directors/Members

1) Title: PRESIDENT
 Name: JOEL GOLDSTEIN
 Address: 281 RT 79
 MORGANVILLE, NJ 07751



**If you would like to receive photocopies of documents filed by this business entity, mail your request to PO Box 450, Trenton, NJ 08625. Indicate the Business Entity Number(s) involved and the type of document you wish to have copies of. Your choices are listed below:

CHARTER DOCUMENTS

Original Certificate Only (For example, Certificate of Incorporation);
 Changes and Amendments to the Original Certificate Only; **OR**
 All Charter Documents (Original Certificate and Changes/Amendments)
 And/or

ANNUAL REPORTS

Copy of Latest Annual Report; **OR**
 Copy of Annual Report for a Specific Year(s) (List the Year Desired)

The photocopy fee for all entities except limited liability companies is \$1 per page. For limited liability companies, the fee is \$10 for the first page and \$2 per page thereafter.

The total fee amount for your order will vary depending on the number of pages associated with each filed document you request. You may supply us with a check with a NOT TO EXCEED instruction to cover the costs. Make the check

payable to the Treasurer, State of New Jersey. Alternately, you may pay by credit card (provide card#/expiration date and cardholder information) or depository account. Please include a self-addressed envelope with your order. If you have any questions or would like information on alternative service options such as over-the-counter expedited service, call 609-292-9292 (option 3 on the main menu and then option 8), weekdays, 8:30 a.m. to 4:30 p.m.

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file:///C:/Documents and Settings/valerieroddy/Desktop/NJ Business Entity Status Reports.htm

5/25/2008

EXHIBIT B



Responsive Systems - The Company

President and Principal Consultant

■ **Biography for Joel Goldstein**

■ **Full Resume for Joel Goldstein**

Responsive Systems was founded by Joel Goldstein in December of 1980 to assist companies with the design and implementation of online business systems. Our services range from the evaluation and selection of micro, mini, and mainframe computers and software, through providing technical and management studies, and technical education. Over the years we have provided services to dozens of companies, both nationally and internationally, across all aspects of Information Systems and technology. The staff of Responsive Systems has presented at user groups, taught seminars, and consulted on six continents. Staff members and consulting associates are acknowledged experts in Dynamic SQL Cache, DB2, database, IBM, z390, zSeries, DB2 performance, MVS, CICS, Capacity Planning, Modeling, and both system and application performance Benchmark studies.

Consultants:

- Abrar Bhatti
- Joe Frisbie
- David Goldstein
- Wallace Ferguson

Sales:

- Doug Donath, Western
- Nancy Walton, Mid-West
- Nancy Mezzadri, East & South
- Helen Hubel, Canada
- Phyllis Akselrad

Office:

- Kerry Frisbie, Office Manager
-



eMail Us with Your Questions or Comments



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281 Highway 79, Morganville, NJ 07751 USA
(732) 972-1261, (800) DB2-EXPErt, (732) 972-9416 FAX
Last modified: March 19, 2008 by Dr Bernie Domanski

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FOR THE DISTRICT OF HAWAII

RSI CORP., dba RESPONSIVE
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Plaintiff,

vs.

INTERNATIONAL BUSINESS
MACHINES CORPORATION; and
DOE DEFENDANTS 1-20,

Defendants.

**CIVIL NO. CV 08-00066
JMS/BMK**

CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was duly served on the following by depositing same in the United States Mail, postage prepaid, addressed to the following last known address:

ROBERT D. TRIANTOS
EDMUND W.K. HAITSUKA
CARLSMITH BALL LLP
75-1000 Henry Street, Suite 209
P.O. Box 1720
Kailua-Kona, HI 96745-1720

Attorneys for Plaintiff
RSI Corp.

DATED: Honolulu, Hawaii, May 27, 2008.



JAMES KAWASHIMA
SHIRLEY M. KAWAMURA
SHON MORGAN
SCOTT L. WATSON
VALERIE RODDY
Attorneys for Defendant
INTERNATIONAL BUSINESS MACHINES
CORPORATION